

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

IN RE: JOHNSON & JOHNSON	:	Civil Action No. 3:16-md-2738-FLW-
TALCUM POWDER PRODUCTS	:	LHG
MARKETING, SALES PRACTICES	:	
AND PRODUCTS LIABILITY	:	MDL No. 2738
LITIGATION	:	
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## PROPOSED JOINT AGENDA AND REPORT FOR MARCH 6, 2018 STATUS CONFERENCE

## I. STATUS OF DISCOVERY

## A. DEPOSITIONS

On February 20, 2018, the PSC filed an appeal of Judge Pisano's proposed case management order relating to discovery and depositions. Defendants filed a response on March 2, 2018. The parties will be prepared to discuss these submissions to the Court at the upcoming status conference. Meanwhile discovery is proceeding in accordance with Judge Pisano's order.

On February 21, 2018, the PSC served on the Johnson & Johnson Defendants 30(b)(6) deposition notices. The Johnson & Johnson Defendants are reviewing the PSC's notices and will provide comments back to the PSC as soon as possible.

On February 27, 2018, the PSC served on Imerys a 30(b)(6) deposition notice. Imerys is in the process of reviewing the notice and will provide comments back to the PSC.

On February 27, 2018, the PSC served on PCPC a 30(b)(6) deposition notice. PCPC is in the process of reviewing the notice and will provide comments back to the PSC.

The PSC has identified numerous documents withheld for privilege that relate to the influence or bias of the published literature. The PSC will ask for expedited consideration of its objections to those documents being withheld for privilege prior to the 30(b)(6) depositions proceeding. Defendants state that the PSC has not identified specific documents to which they are challenging privilege designations, but instead, they have made general privilege challenges, which Defendants are addressing. If the PSC identifies the specific documents to which they are referring, Defendants will address the challenges to those documents.

## **B. SAMPLES & TESTING**

### **i. Johnson & Johnson Defendants**

The PSC provided the Johnson & Johnson Defendants with their selection of samples to be tested on March 2, 2018 in accordance with the protocol entered by the Court. *See* Jan. 31, 2018 Stipulation & Order (Dkt. No. 4032). Defendants may challenge the number of samples selected by Plaintiffs and must do so under the Order by March 16th.

Following the finalization of the samples to be tested, the samples will be divided at the agreed upon third party lab in accordance with the protocol. Testing of the samples will then proceed. Plaintiffs will serve their expert reports 45 days after the completion of testing.

### **ii. Imerys**

On February 8, 2018, the Court entered the Agreed Order and Stipulation regarding production of Talc Samples from Imerys. Plaintiffs must select and identify for Imerys a reasonable number of samples they propose to test on or before March 12, 2018.

## **II. REQUEST FOR EXPERT REPORTS AND DAUBERT HEARING DATE**

The Court requested that the PSC provide “a preliminary expert report, not your final report that we have been talking about with samples, et cetera. I want a preliminary expert report that explains the science and opinion why asbestos [and nickel, chrome, and other carcinogens] used as it is in this case can cause ovarian cancer.” *See* 2/7/2018 Hearing Tr. at 36:22-37:2; 37:22-38:8. The PSC is to provide this report by April 9, 2018.

Defendants respectfully request that the Court set a date for the service of the reports of Plaintiffs' experts and the date for a *Daubert* hearing.

### **III. STATUS OF CASES RE-FILED IN THE MDL PER CMO 8**

There are 106 cases where Plaintiffs who were previously part of a multi-plaintiff complaint have filed short form complaints in this MDL proceeding but have not complied with CMO 8 in either serving the short form complaint on Defendants or filing a notice of filing on the master docket. *See* CMO 8, ¶¶ 1 and 5 (requiring plaintiffs to file short form complaints pursuant to CMO 2 and to serve these complaints pursuant to CMO 3); *see also* CMO 3, ¶¶ 3 and 4 (requiring filing of an ECF notice if the original service of process was proper or requiring service of process where the original complaint was not properly served).

There are also 349 plaintiffs from multi-plaintiff cases pending in the MDL who have not filed Short Form Complaints pursuant to CMO 8. There are 103 plaintiffs from multi-plaintiff cases that were recently transferred into the MDL who have not yet filed Short Form Complaints.

### **IV. DUPLICATE FILED CASES**

There are 68 plaintiffs in this MDL who have multiple cases pending. There are two primary scenarios where duplicate filing of cases occurred: (1) the case was filed in another federal district and transferred into the MDL, but prior to transfer, plaintiffs' counsel opened up another case directly in the MDL; or (2) two different firms have filed a case for the same plaintiff. The parties are continuing to work to address duplicate filed cases.

### **V. REPORT ON FEDERAL DOCKET**

As of February 23, 2018:

- A. There are currently 5,364 cases pending in the MDL in which the Johnson & Johnson Defendants have been served or in which Plaintiffs from multi-plaintiff cases pending in the MDL have filed Short Form Complaints on individual dockets and have not served the Johnson & Johnson Defendants (and have opened case numbers), totaling 5,783 Plaintiffs (including 376 Plaintiffs in 35 multi-plaintiff cases removed from Missouri state court that have

not filed Short Form Complaints on individual dockets, 23 Plaintiffs in *Harders* removed from Illinois state court that have not filed Short Form Complaints on individual dockets, 11 Plaintiffs in *Lovato* removed from New Mexico state court that have not filed Short Form Complaints on individual dockets, 1 Plaintiff in *Robb* removed from Oklahoma state court that have not filed Short Form Complaints on individual dockets, 16 plaintiffs from the *Crenshaw* case from the Middle District of Georgia that have not filed Short Form Complaints on individual dockets, and 25 plaintiffs from the *Rodriguez* case from the District of Puerto Rico).

Individual Plaintiffs in the multi-plaintiff cases are in the process of filing Short Form Complaints on individual dockets. Thus far, all of the individual Plaintiffs in the following multi-plaintiff cases have filed Short Form Complaints on individual dockets: *Karen Glenn, et al.* and *Mary Rea, et al.* (one *Rea* Plaintiff, Exia Monroe, a New Jersey resident, has re-filed in New Jersey state court). Additionally, all of the individual Plaintiffs in the *Charmel Rice, et al.* and *Lillie Lewis, et al.* multi-plaintiff cases have filed Short Form Complaints on individual dockets, except individual Plaintiffs Charmel Rice and Lillie Lewis.

There are six Plaintiffs named as the lead Plaintiffs in multi-plaintiff cases who did not refile Short Form Complaints on individual dockets, but filed a Short Form Complaint in their corresponding multi-plaintiff case dockets. These include the lead Plaintiffs from four multi-plaintiff cases removed from Missouri state court (*Brenda Anderson, et al.*, *Lillie Lewis, et al.*, *Charmel Rice, et al.*, and *Jerie Rhode, et al.*), Marie Robb in the *Robb* case removed from Oklahoma State, and Deborah Crenshaw from the *Crenshaw* case originally filed in the Middle District of Georgia.

- B.** There are currently 3 multi-plaintiff cases removed from Missouri state court and pending in the Eastern District of Missouri, discussed below, that the JPML has not yet transferred into the MDL (totaling

205 plaintiffs). Motions to dismiss and motions to remand have been filed in these cases.

The three cases pending in the Eastern District of Missouri are listed below along with the judges to which they are assigned.

**Judge Ronnie L. White**

Darren Cartwright, et al. v. Johnson & Johnson, et al. Case No. 4:17-cv-02851-RLW

**Judge Ronnie L. White**

Sherron Gavin, et al. v. Johnson & Johnson, et al. Case No. 4:18-cv-00212-RLW

**Judge Audrey Fleissig**

Maureen Kassimali, et al. v. Johnson & Johnson, et al. Case No. 4:18-cv-00014-AGF

- C. There are a handful of other single-plaintiff cases that have been on CTOs and will be transferred in the near future to the MDL. These cases would not greatly affect the number of cases pending in the MDL absent the plaintiffs in the multi-plaintiff cases.

## **VI. STATE COURT LITIGATION**

As of February 23, 2018:

**California:** There are 302 cases with 357 plaintiffs in the California coordinated proceeding, *Johnson & Johnson Talcum Powder Cases*, Judicial Council Coordinated Proceeding No. 4877. These cases are assigned to Judge Maren E. Nelson. To date, a *Sargon* hearing has been held, and one case—*Echeverria*—proceeded to trial. On July 10, 2017, the court granted Imerys’ motion for summary judgment, dismissing all claims against Imerys. The *Echeverria* trial resulted in a plaintiff verdict against the Johnson & Johnson Defendants; however, on October 20, 2017, the Court granted the Johnson & Johnson Defendants’ motions for judgment notwithstanding the verdict and, alternatively, for a new trial. Elisha Echeverria, Acting Trustee of the 2017 Eva Echeverria Trust, filed her Notice of

Appeal on December 18, 2017. The Johnson & Johnson Defendants filed their Cross-Notice of Appeal on January 4, 2018. On February 27, 2018, the California Appellate Court denied plaintiff Echeverria's motion for expedited treatment of the appeal and severed the appeal filed on November 13, 2017 as to the order granting summary judgment as to Imerys from the appeal of the order granting the judgment notwithstanding the verdict filed on December 18, 2017 as to the Johnson & Johnson Defendants.

The next status conference will be held on March 22, 2018.

**Delaware:** There are currently 196 cases pending in the Superior Court of Delaware in which the Johnson & Johnson Defendants have been served. All of the Delaware cases have been consolidated before the Hon. Charles E. Butler. On January 19, 2017, the Johnson and Johnson Defendants filed a motion to dismiss for lack of personal jurisdiction. On January 31, 2017, Plaintiffs served jurisdictional discovery. On March 2, 2017, the Johnson and Johnson Defendants filed a motion for protective order to quash the jurisdictional discovery. Briefing on the motion for protective order was completed on April 17, 2017 and is awaiting an argument date. Judge Butler ordered additional briefing from all parties on the *Bristol Myers* decision to be submitted by September 4, 2017. On December 21, 2017, Judge Butler issued an order requesting Plaintiffs respond to questions about jurisdictional discovery by January 31, 2018. Plaintiffs filed briefing in response to this request. On February 14, 2018, Judge Butler sent a letter to all counsel noting that jurisdictional discovery and personal jurisdiction are too intertwined to be treated separately and requesting Plaintiffs submit any supplemental briefing on personal jurisdiction by March 16, 2018. Judge Butler stated that he will only request a responsive brief from Johnson & Johnson if he feels plaintiffs have raised a point requiring a response.

**Missouri:** There are currently 15 cases, with a total of 706 plaintiffs pending in the 22nd Judicial Circuit Court, St. Louis (City) in which Defendants have been served.

Trial in the case of *Daniels v. Johnson & Johnson, et al.* resulted in a defense verdict on March 3, 2017 (individual claim filed in the multi-plaintiff *Valerie Swann* matter). Plaintiffs filed a motion for new trial on April 10, 2017, which is pending before the trial court.

Appeals are pending from judgments against Johnson & Johnson Defendants entered in favor of plaintiff in the *Gloria Ristesund* case. Appeals are also pending

from judgments against the Johnson & Johnson Defendants and Imerys in the *Deborah Giannecchini* and *Lois Slempp* cases.

Trial in the case of *Michael Blaes on behalf of Shawn Blaes v. Johnson & Johnson, et al.* before Judge Rex Burlison is currently stayed and briefing on Defendants' petitions for writs of prohibition is pending before the Missouri Supreme Court on venue challenges. Oral argument took place on February 27, 2018.

In the *Lois Slempp* case, that trial court found that plaintiffs had established personal jurisdiction exists in Missouri state court over the Johnson & Johnson defendants and Imerys. The *Slempp* case is on direct appeal to the Missouri Court of Appeals. The Missouri Court of Appeals denied Johnson & Johnson's writ of prohibition in the *Slempp* case.

On October 17, 2017, the Missouri Court of Appeals, Eastern District, reversed and vacated the judgment in the *Jacqueline Fox* case for lack of personal jurisdiction. The Court also rejected Plaintiff's request to remand the case to the trial court to attempt to establish jurisdictional facts. On December 19, 2017, the Court denied Plaintiff's Motion for Rehearing. Plaintiff has requested review of the decision by the Missouri Supreme Court; this request is currently pending.

In the multi-plaintiff *Gail Lucille Ingham, et al. v. Johnson & Johnson, et al.* case, the trial court ordered the claims of all plaintiffs set for trial on June 4, 2018, without resolving pending personal jurisdiction and venue challenges. Defendants filed a writ with the Supreme Court of Missouri challenging the order of setting the claims of all plaintiffs for trial, which was denied. The case is set for trial on June 4, 2018.

Another multi-plaintiff trial is set to begin on September 14, 2018.

**New Jersey:** There are currently 366 cases pending before Judge Johnson in the Atlantic County Superior Court Multicounty Litigation, *In re: Talc-Based Powder Products Litigation*, Case No. 300. The cases are currently stayed for discovery purposes pending resolution of the plaintiffs' appeal of the ruling by Judge Johnson on the *Kemp* issues. On January 8, 2018, the New Jersey Appellate Division issued a *Sua Sponte* Order staying the appeals for six months or until the New Jersey Supreme Court decides the appeal pending in *In re: Accutane Litigation*, A-25-17, 079958, and *In re: Accutane Litigation*, A-26/27-17, 079933.



**Florida:** There are fourteen cases pending in Florida state court. There are five cases pending in Broward County, Florida, including three cases before Judge Michael A. Robinson, one case before Judge David Haimen, and one case before Judge Sandra Periman. There are three cases pending in Miami-Dade County, Florida, including one case before Judge Rodolfo Ruiz, one case before Judge Dennis Murphy, and one case before Judge Barbara Areces. There are two cases pending in Hillsborough County, Florida before Judge Rex Barbas. There is one case pending in Osceola County, Florida before Judge Margaret Schreiber. There is one case pending in Palm Beach County, Florida before Judge Jamie Goodman. There is one case pending in Volusia County, Florida before Judge Christopher France. There is one case in Orange County, Florida before Judge Jose R. Rodriguez.

In the *Ricketts* matter, pending in Broward County, Imerys' Motion to Dismiss for Lack of Personal Jurisdiction was denied on November 9, with the Court granting 30 days for Imerys to file an appeal. That appeal was filed on December 8, 2017.

**Georgia:** There is one case pending in state court in Fulton County, Georgia before Judge Jane Morrison. On January 10, 2018, the Court stayed all discovery in this case.

**Illinois:** There are two cases pending in Madison County, Illinois state court before Judge William Mudge, one case pending in Cook County, Illinois before Judge Daniel T. Gillespie, and one case pending in McLean County, Illinois before Judge Rebecca Foley.

**Pennsylvania:** There is one case pending in state court in Allegheny County, PA before Judge Robert Colville. On November 13, 2017, the Court granted Imerys' Preliminary Objections to personal jurisdiction in Pennsylvania and dismissed plaintiff's claims against Imerys in this case. There is one case pending in state court in Philadelphia County, PA before Judge Lisa Rau.

**Louisiana:** There are seven cases pending in the Parish of Orleans, Louisiana, including two cases before Judge Robin M. Giarrusso, two cases before Judge Clair Jupiter (docket being handled by former Judge Melvin Zeno while Judge Jupiter is on medical leave for three months), one case before Judge Paulette Irons, one case before Judge Kern Reese, and one case before Judge Piper Griffin.



In the *McBride* matter, Imerys' Motion to Dismiss for Lack of Personal Jurisdiction was granted on December 1, 2017. On January 3, 2018, the Court denied the Plaintiff's motion for a new trial on this ruling.

## VII. STATUS OF PENDING MOTIONS

- A. The list of motions pending in individual cases is attached hereto as Exhibit A.
- B. On July 14, 2017, the Court issued a dismissal of the *Estrada* Consumer Class case, finding that Estrada did not allege an injury in fact. ECF Nos. 50, 51. The Court dismissed and entered judgment in Estrada's lawsuit on August 10, 2017. ECF No. 53. Estrada has appealed this decision. No other motions are pending with regard to the Consumer Class cases.
- C. Case Management Order No. 10, which is the stipulation on amendment or refiling of cases against PCPC, was entered by the Court on February 22, 2018.

Respectfully submitted,

s/Susan M. Sharko

Susan M. Sharko  
DRINKER BIDDLE & REATH LLP  
600 Campus Drive  
Florham Park, New Jersey 07932  
Telephone: 973-549-7000  
Facsimile: 973-360-9831  
Email: susan.sharko@dbr.com

s/Gene M. Williams

Gene M. Williams  
SHOOK, HARDY & BACON L.L.P.  
JPMorgan Chase Tower  
600 Travis St., Suite 3400  
Houston, TX 77002  
Telephone: 713-227-8008  
Facsimile: 713-227-9508  
Email: gmwilliams@shb.com

*s/John H. Beisner*

John H. Beisner  
SKADDEN, ARPS, SLATE,  
MEAGHER & FLOM LLP  
1440 New York Avenue, N.W.  
Washington, D.C. 20005  
Telephone: 202-371-7000  
Facsimile: 202-661-8301  
Email: [john.beisner@skadden.com](mailto:john.beisner@skadden.com)

*s/Lorna A. Dotro*

Lorna A. Dotro  
COUGHLIN DUFFY LLP  
350 Mount Kemble Avenue  
Morristown, NJ 07962  
Telephone: 973-631-6016  
Facsimile: 973-267-6442  
Email: [ldotro@coughlinduffy.com](mailto:ldotro@coughlinduffy.com)

*s/Sheryl Axelrod*

Sheryl Axelrod  
THE AXELROD LAW FIRM, PC  
The Beasley Building  
1125 Walnut Street  
Philadelphia, PA 19107  
Telephone: 215-461-1768  
Facsimile: 215-238-1779  
Email: [saxelrod@theaxelrodfirm.com](mailto:saxelrod@theaxelrodfirm.com)

*s/Michelle A. Parfitt*

Michelle A. Parfitt  
ASHCRAFT & GEREL, LLP  
4900 Seminary Road, Suite 650  
Alexandria, VA 22311  
Telephone: 703-931-5500  
Email: [mparfitt@ashcraftlaw.com](mailto:mparfitt@ashcraftlaw.com)

*s/P. Leigh O'Dell*

P. Leigh O'Dell  
BEASLEY, ALLEN, CROW,  
METHVIN, PORTIS & MILES, P.C.  
218 Commerce Street  
Montgomery, Alabama 36104  
Telephone: 334-269-2343  
Email: [leigh.odell@beasleyallen.com](mailto:leigh.odell@beasleyallen.com)

*s/Christopher M. Placitella*

Christopher M. Placitella  
COHEN PLACITELLA ROTH, PC  
127 Maple Avenue  
Red Bank, NJ 07701  
Telephone: 888-219-3599  
Facsimile: 215-567-6019  
Email: [cplacitella@cprlaw.com](mailto:cplacitella@cprlaw.com)

**EXHIBIT A**  
**STATUS OF PENDING MOTIONS IN INDIVIDUAL CASES**

<b>Case Name</b>	<b>Case No.</b>	<b>Status of Pending Motions</b>
<i>Paul Feldman, et al. v. Johnson &amp; Johnson, et al.</i>	3:17-cv-03163	Plaintiffs' Motion to Remand filed May 18, 2017. Fully briefed.
<i>Bernadine Moore v. Johnson &amp; Johnson, et al.</i>	3:17-cv-04034	Plaintiffs' Motion to Remand filed June 28, 2017. Johnson & Johnson Defendants' Opposition filed July 28, 2017. Imerys' Opposition filed July 28, 2017.
<i>Gavin v. Johnson &amp; Johnson, et al.</i>	3:17-cv-05907	Plaintiffs' Motion to Remand filed August 10, 2017. Fully briefed.
<i>Edna Brown v. Johnson &amp; Johnson, et al.</i>	3:17-cv-05724	Plaintiffs' Motion to Remand filed September 1, 2017. Fully briefed.
<i>Carolyn Bennett v. Johnson &amp; Johnson, et al.</i>	3:17-cv-05723	Plaintiffs' Motion to Remand filed September 1, 2017. Fully briefed.
<i>Maureen Abbeduto, et al. v. Johnson &amp; Johnson, et al.</i>	3:17-cv-05812	Plaintiffs' Motion to Remand filed September 1, 2017. Fully briefed.
<i>Kim Knight v. Johnson &amp; Johnson, et al.</i>	3:17-cv-05796	Plaintiffs' Motion to Remand filed September 1, 2017. Fully briefed.
<i>Sharon McBee, et al. v. Johnson &amp; Johnson, et al.</i>	3:17-cv-5720	Johnson & Johnson Defendants' Motion to Dismiss filed September 5, 2017. Motion to be terminated pursuant to CMO 8.
<i>Donna McNichols, et al. v. Johnson &amp; Johnson, et al.</i>	3:17-cv-5719	Johnson & Johnson Defendants' Motion to Dismiss filed September 5, 2017. Motion to be terminated pursuant to CMO 8.
<i>Sandra Lee, et al. v. Johnson &amp; Johnson, et al.</i>	3:17-cv-03548	Plaintiffs' Motion to Remand filed September 25, 2017. Fully briefed.

<b>Case Name</b>	<b>Case No.</b>	<b>Status of Pending Motions</b>
<i>Ruth Carver v. Johnson &amp; Johnson, et al.</i>	3:17-cv-03549	Plaintiffs' Motion to Remand filed September 25, 2017. Fully briefed.
<i>Monica Belcher v. Johnson &amp; Johnson, et al.</i>	3:17-cv-3452	Plaintiffs' Motion to Dismiss filed October 31, 2017. Defendants' Opposition filed November 20, 2017.
<i>Barbara Newton v. Johnson &amp; Johnson, et al.</i>	3:17-cv-7409	Plaintiffs' Motion to Dismiss filed October 31, 2017. Defendants' Opposition filed November 20, 2017.
<i>Anne Giles, et al. v. Johnson &amp; Johnson, et al.</i>	3:17-cv-1158	Plaintiffs' Motion to Dismiss filed October 31, 2017. Defendants' Opposition filed November 20, 2017.
<i>Wendy Creamer-Zintel v. Johnson &amp; Johnson, et al.</i>	3:17-cv-7366	Plaintiffs' Motion to Dismiss filed October 31, 2017. Defendants' Opposition filed November 20, 2017.
<i>Vicki Foster v. Johnson &amp; Johnson, et al.</i>	3:17-cv-1134	Plaintiffs' Motion to Dismiss filed October 31, 2017. Defendants' Opposition filed November 20, 2017.
<i>Connie Hilabrand v. Johnson &amp; Johnson, et al.</i>	3:17-cv-1159	Plaintiffs' Motion to Dismiss filed October 31, 2017. Defendants' Opposition filed November 20, 2017.
<i>Maria Velardo, et al. v. Johnson &amp; Johnson, et al.</i>	3:17-cv-1154	Plaintiffs' Motion to Dismiss filed October 31, 2017. Defendants' Opposition filed November 20, 2017.
<i>Tasha Martin v. Johnson &amp; Johnson, et al.</i>	3:17-cv-7406	Plaintiffs' Motion to Dismiss filed October 31, 2017. Defendants' Opposition filed November 20, 2017.
<i>Rebecca Bowers v. Johnson &amp; Johnson, et al.</i>	3:17-cv-12308	Plaintiffs' Motion to Remand filed December 4, 2017. Defendants' Opposition filed December 19, 2017.
<i>Peck, et al. v. Johnson &amp; Johnson, et al.</i>	3:17-cv-12665	Plaintiffs' Motion to Remand filed January 11, 2018. Defendants' Opposition filed January 22, 2018.
<i>Anderson, et al. v. Johnson &amp; Johnson, et al.</i>	3:17-cv-2943	Plaintiff's Motion for Voluntary Dismissal without prejudice filed February 15, 2018. Defendants' opposition is due March 5, 2018.